

Decision Notice Approval (amended)

Planning Act Form 5 (version 1.0 effective 3 July 2017) made under Section 282 of the Planning Act 2016 for a minor change to the decision notice (approval) under s81 Planning Act 2016, Section 3.5.22 and 3.5.24 of the Integrated Planning Act 1997 and Section 376 of the Sustainable Planning Act 2009

Application number:	D/188-2014	Contact:	Brandon Diplock
Notice Date:	22 February 2018	Contact Number:	1300 22 55 77

APPLICANT DETAILS

Name:	Roman Catholic Trust Corp. Diocese of Rockhampton		
Postal address:			
Phone no:	Mobile no: 0400 739 778	Email:	

I acknowledge receipt of the above application on 1 December 2017 and confirm the following:

DEVELOPMENT APPROVAL

Development Permit for a Material Change of Use for Educational Establishment

PROPERTY DESCRIPTION

Street address:	390 Feez Street, Norman Gardens
Real property description:	Lot 6 on SP123558, Lot 7 on RP618703 and Lot 45 on RP615945, Parish of Murchison

OWNER DETAILS

Name:	Roman Catholic Diocese Of Rton
Postal address:	
Dear	Roman Catholic Trust Corp. For The Diocese of Rock
I advise that, on 20 February 2018 the above development application was:	
<input checked="" type="checkbox"/> approved in full with conditions* (refer to the conditions contained in Attachment 1)	
*Note: The conditions show which conditions have been imposed by the assessment manager and which conditions have been imposed by a referral agency.	

CHANGES TO CONDITIONS

The conditions which have been changed or cancelled are as follows:

1)	Condition 2.1	changed	20 February 2018
2)	Condition 8.5	changed	20 February 2018
3)	Item 7	Changed	20 February 2018

1. DETAILS OF THE APPROVAL

	Development Permit	Preliminary Approval
Development assessable under the planning scheme, a temporary local planning instrument, a master plan or a preliminary approval which includes a variation approval	<input checked="" type="checkbox"/>	<input type="checkbox"/>

2. GROUNDS OF JUSTIFICATION OF APPROVAL DESPITE CONFLICT WITH THE PLANNING SCHEME:

The grounds for approving the application, despite the conflict with the planning scheme, are:

a) The proposed development is considered appropriately located and is designed to mitigate any impacts such as noise, ensuring that the amenity of the surrounding residents is not adversely affected.
b) Assessment of the development against the relevant area intent, planning scheme codes and planning scheme policies demonstrates that the proposed development, subject to conditions, will not cause significant adverse impacts on the surrounding natural environment, built environment and infrastructure, community facilities, or local character and amenity;
c) The proposed use does not compromise the achievements of the Desired Environmental Outcomes in the <i>Rockhampton City Plan 2005</i> ; and
d) The proposed development does not compromise the relevant State Planning Policy.

3. CONDITIONS

This approval is subject to the conditions in Attachment 1.

4. FURTHER DEVELOPMENT PERMITS REQUIRED

Please be advised that the following development permits are required to be obtained before the development can be carried out:

Type of development permit required	Subject of the required development permit
Operational Works	<i>Access and Parking Works</i> <i>Stormwater Works</i> <i>Roof and Allotment Drainage Works</i>
Building Works	
Plumbing and Drainage Works	

5. SUBMISSIONS

There were 6 properly made submissions received from the following submitter(s);

Name of principal submitter	Residential or business address	Electronic address (if provided)
1. R A McCamley	PO Box 6062, Red Hill Rockhampton	
2. Mrs R Atkinson	7 Langford Street, Norman Gardens	
3. L M Milne	9 Langford Street, Norman Gardens	
4. J J Ross	13 Thomas Street, Norman Gardens	
5. Mrs D F Mylrea	15 Thomas Street, Norman Gardens	

Name of principal submitter	Residential or business address	Electronic address (if provided)
6. C J and D Huntly	11 Langford Street, Norman Gardens	

6. REFERRAL AGENCIES NIL

7. THE APPROVED PLANS

The approved development must be completed and maintained generally in accordance with the approved drawings and documents:

Plan/Document Name	Plan/Document Number	Dated
Proposed Overall Site Plan	1988 SK-02	November 2013
Existing Main Carpark	1988 SK-03	November 2013
Proposed Main Carpark	1988 SK-04	November 2013
Existing Staff Carpark and Kindy	1988 SK-05	November 2013
Proposed Staff Carpark and Kindy	1988 SK-06	November 2013
Existing Prep and Carpark	1988 SK-07	November 2013
Proposed Prep and Carpark	1988 SK-08	November 2013
Proposed Floor Plan	1988 SK-09	December 2013
Proposed Floor Plan	1988 SK-11	December 2013
Elevations – Kindergarten	1988 SK-10	December 2013
Elevations – New Prep	1988 SK-12	December 2013
Noise Impact Assessment St Anthony's School 390 Feez Street, Norman Gardens	SP0578-0, Revision 0	9 April 2015
St Anthony's Catholic Primary School – Transport Impact Assessment	14B1125000, Issue A	13 October 2014
Acoustic Fence	1988 SP-20 Rev B	September 2017

8. CURRENCY PERIOD FOR THE APPROVAL (S.85)

The standard relevant periods stated in section 85 of *Planning Act 2006* apply to each aspect of development in this approval, if not stated in the conditions of approval attached.

9. STATEMENT OF REASONS

Description of the development	The proposed development is for a Material Change of Use – Educational Establishment
Reasons for Decision	<p>a) The proposed change is considered appropriately located and is designed to mitigate any impacts such as noise, ensuring that the amenity of the surrounding residents is not adversely affected;</p> <p>b) The proposed change does not compromise the achievements of the Desired Environmental Outcomes in the <i>Rockhampton City Plan 2005 (superseded)</i>; and</p>

	c) Assessment of the development against the relevant zone purpose, planning scheme codes and planning scheme policies demonstrates that the proposed development will not cause significant adverse impacts on the surrounding natural environment, built environment and infrastructure, community facilities, or local character and amenity.
Assessment Benchmarks	The proposed development was assessed against the following assessment benchmarks: <ul style="list-style-type: none"> • <i>Rockhampton City Plan 2005 (Superseded)</i>
Matters prescribed by regulation	<ul style="list-style-type: none"> • The <i>Rockhampton City Plan 2005 (superseded)</i>; • Surrounding use of adjacent premises in terms of commensurate and consistent development form; and • The common material, being the material submitted with the application.

10. RIGHTS OF APPEAL

The rights of an applicant to appeal to a tribunal or the Planning and Environment Court against a decision about a development application are set out in chapter 6, part 1 of the *Planning Act 2016*. For particular applications, there may also be a right to make an application for a declaration by a tribunal (see chapter 6, part 2 of the *Planning Act 2016*).

Appeal by an applicant

An applicant for a development application may appeal to the Planning and Environment Court against the following:

- the refusal of all or part of the development application
- a provision of the development approval
- the decision to give a preliminary approval when a development permit was applied for
- a deemed refusal of the development application.

An applicant may also have a right to appeal to the Development tribunal. For more information, see schedule 1 of the *Planning Act 2016*.

Appeal by a submitter

A submitter for a development application may appeal to the Planning and Environment Court against:

- any part of the development application for the development approval that required impact assessment
- a variation request.

The timeframes for starting an appeal in the Planning and Environment Court are set out in section 229 of the *Planning Act 2016*.

Attachment 2 is an extract from the *Planning Act 2016* that sets down the applicant's appeal rights and the appeal rights of a submitter.

11. WHEN THE DEVELOPMENT APPROVAL TAKES EFFECT

This development approval takes effect:

- From the time the decision notice is given – if there is no submitter and the applicant does not appeal the decision to the court.

Or

- When the submitter's appeal period ends – if there is a submitter and the applicant does not appeal the decision to the court.

Or

- Subject to the decision of the court, when the appeal is finally decided – if an appeal is made to the court.

This approval will lapse unless substantially commenced within the above stated relevant periods (refer to sections 85 of *Planning Act 2016* for further details).

12. ORIGINAL DECISION ASSESSMENT MANAGER

Name: Tarnya Fitzgibbon <u>MANAGER DEVELOPMENT AND BUILDING</u>	Date: 31 July 2015
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13. ASSESSMENT MANAGER

Name: Tarnya Fitzgibbon <u>COORDINATOR</u> <u>DEVELOPMENT ASSESSMENT</u>	Signature:	Date: 22 February 2018
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Attachment 1 – Conditions of the approval

Part 1 – Conditions imposed by the assessment manager [Note: where a condition is imposed about infrastructure under Chapter 4 of the Planning Act 2016, the relevant provision of the Act under which this condition was imposed must be specified.]

Attachment 2—Extract on appeal rights

1.0 ADMINISTRATION

- 1.1 The Developer is responsible for ensuring compliance with this approval and the Conditions of the approval by an employee, agent, contractor or invitee of the Developer.
- 1.2 Where these Conditions refer to “Council” in relation to requiring Council to approve or to be satisfied as to any matter, or conferring on the Council a function, power or discretion, that role of the Council may be fulfilled in whole or in part by a delegate appointed for that purpose by the Council.
- 1.3 All conditions of this approval must be undertaken and completed to the satisfaction of Council, at no cost to Council.
- 1.4 All conditions, works, or requirements of this approval must be undertaken and completed prior to the commencement of the use, unless otherwise stated.
- 1.5 Where applicable, infrastructure requirements of this approval must be contributed to the relevant authorities, at no cost to Council prior to the commencement of the use, unless otherwise stated.
- 1.6 The following further Development Permits must be obtained prior to the commencement of any works associated with their purposes:
- 1.6.1 Operational Works:
 - (i) Access and Parking Works;
 - (ii) Stormwater Works; and
 - (iii) Roof and Allotment Drainage Works
 - 1.6.2 Plumbing and Drainage Works; and
 - 1.6.3 Building Works.
- 1.7 All Development Permits for Operational Works and Plumbing and Drainage Works must be obtained prior to the issue of a Development Permit for Building Works.
- 1.8 Unless otherwise stated, all works must be designed, constructed and maintained in accordance with the relevant Council policies, guidelines and standards.
- 1.9 All engineering drawings/specifications, design and construction works must comply with the requirements of the relevant *Australian Standards* and must be approved, supervised and certified by a Registered Professional Engineer of Queensland.
- 1.10 Lot 45 on RP615945, Lot 7 on RP618703 and Lot 6 on SP123558 must be amalgamated and registered as one lot prior to the commencement of the use.

2.0 APPROVED PLANS AND DOCUMENTS

- 2.1 The approved development must be completed and maintained generally in accordance with the approved plans and documents, except where amended by the conditions of this permit:

<u>Plan/Document Name</u>	<u>Plan/Document Number</u>	<u>Dated</u>
Proposed Overall Site Plan	1988 SK-02	November 2013
Existing Main Carpark	1988 SK-03	November 2013
Proposed Main Carpark	1988 SK-04	November 2013
Existing Staff Carpark and Kindy	1988 SK-05	November 2013
Proposed Staff Carpark and Kindy	1988 SK-06	November 2013
Existing Prep and Carpark	1988 SK-07	November 2013
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Acoustic Fence	1988 SP-20 Rev B	September 2017

- 2.2 Where there is any conflict between the conditions of this approval and the details shown on the approved plans and documents, the conditions of approval must prevail.
- 2.3 Where conditions require the above plans or documents to be amended, the revised document(s) must be submitted for endorsement by Council prior to the submission of a Development Application for Operational Works.
- 3.0 ACCESS AND PARKING WORKS
- 3.1 A Development Permit for Operational Works (access and parking works) must be obtained prior to the commencement of any access and parking works on the site.
- 3.2 All works must be designed and constructed in accordance with the approved plans (refer to condition 2.1), *Capricorn Municipal Development Guidelines, Australian Standard AS2890 "Parking Facilities"* and the provisions of a Development Permit for Operational Works (access and parking works).
- 3.3 All parking spaces, access driveway(s), and vehicular manoeuvring areas associated with this proposed development must be concrete paved or asphalted.
- 3.4 The car parking areas must include traffic calming measures to reduce the noise level and speed of vehicles within the car park.
- 3.5 The existing access from Bruigom Street to the development must be widened to allow unimpeded two-way access / egress to and from the site without any queuing occurring in Bruigom Street.

- 3.6 All vehicles must ingress and egress the development in a forward gear.
- 3.7 Universal access parking spaces must be provided in accordance with *Australian Standard AS2890.6 "Parking Facilities - Off-Street parking for people with disabilities"*.
- 3.8 All vehicle operations associated with the development must be directed by suitable directional, informative, regulatory or warning signs in accordance with *Australian Standard AS1742.1 "Manual of Uniform Traffic Control Devices"* and *Australian Standard AS2890.1 "Parking Facilities – Off-street Car Parking"*.
- 3.9 Road signage and pavement markings must be installed in accordance with the *Australian Standard AS1742.1 "Manual of Uniform Traffic Control Devices"*.
- 3.10 All internal pedestrian pathways must be designed and constructed in accordance with *Australian Standard AS1428 "Design for Access and Mobility"*.
- 4.0 PLUMBING AND DRAINAGE WORKS
- 4.1 All works must be designed and constructed in accordance with the approved plans (refer to condition 2.1), *Capricorn Municipal Development Guidelines, Water Supply (Safety and Reliability) Act, the Plumbing and Drainage Act*.
- 4.2 All internal plumbing and sanitary drainage works must be in accordance with regulated work under the *Plumbing and Drainage Act* and Council's Plumbing and Drainage Policies.
- 4.3 The development must be connected to Council's reticulated water network and sewerage network.
- 4.4 The existing sewerage and water connection point(s) must be retained, and upgraded if necessary, to service the development.
- 4.5 Sewer connections and water meter boxes located within trafficable areas must be raised or lowered to suit the finished surface levels and must be provided with trafficable lids.
- 4.6 Adequate domestic and fire fighting protection must be provided to the development, and must be certified by a hydraulic engineer or other suitably qualified person.
- 4.7 Alteration or relocation of internal plumbing and sanitary drainage works associated with the existing building must be in accordance with regulated work under the *Plumbing and Drainage Act*.
- 5.0 STORMWATER WORKS
- 5.1 A Development Permit for Operational Works (stormwater works) must be obtained prior to the commencement of any stormwater works on the site.
- 5.2 All stormwater drainage works must be designed and constructed in accordance with the approved plans (refer to condition 2.1), *Queensland Urban Drainage Manual, Capricorn Municipal Development Guidelines*, sound engineering practice and the provisions of a Development Permit for Operational Works (stormwater works).
- 5.3 Any application for a Development Permit for Operational Works (stormwater works) must include a revised stormwater strategy that incorporates some form of detention such that there is no increase in peak runoff to Bruigom Street.
- 5.4 All stormwater must drain to a demonstrated lawful point of discharge and must not adversely affect adjoining land or infrastructure in comparison to the pre-development condition by way of blocking, altering or diverting existing stormwater runoff patterns or have the potential to cause damage to other infrastructure.
- 5.5 Any application for a Development Permit for Operational Works (stormwater works) must include an assessment of how the development meets the water quality objectives of the *State Planning Policy*.
- 5.6 The proposed development must achieve no increase in peak stormwater runoff for a selected range of storm events up to and including the one in one hundred year storm event (100 year Average Recurrence Interval) for the post development condition.

6.0 ROOF AND ALLOTMENT DRAINAGE WORKS

- 6.1 A Development Permit for Operational Works (roof and allotment drainage works) must be obtained prior to the commencement of any drainage works on the site.
- 6.2 All roof and allotment drainage must be in accordance with the requirements of the *Queensland Urban Drainage Manual* and the *Capricorn Municipal Development Guidelines*.
- 6.3 All roof and allotment drainage must be discharged such that it does not restrict, impair or change the natural flow of runoff water or cause a nuisance to adjoining properties or infrastructure.

7.0 SITE WORKS

- 7.1 All earthworks must be undertaken in accordance with *Australian Standards, AS3798 "Guidelines on Earthworks for Commercial and Residential Developments"*.
- 7.2 Site works must be constructed such that they do not, at any time, in any way restrict, impair or change the natural flow of runoff water, or cause a nuisance or worsening to adjoining properties or infrastructure.

8.0 BUILDING WORKS

- 8.1 All external elements, such as air conditioners and associated equipment, must be adequately screened from public view to Council's satisfaction.
- 8.2 Any lighting devices associated with the development, such as sensory lighting, must be positioned on the site and shielded so as not to cause glare or other nuisance to nearby residents and motorists. Night lighting must be designed, constructed and operated in accordance with *Australian Standard AS4282 "Control of the obtrusive effects of outdoor lighting"*.
- 8.3 External privacy screening must be applied to the windows of the proposed classrooms which face to the south-east boundary to prevent overlooking into the private open space of the adjoining residential dwellings.
- 8.4 All windows facing onto the adjoining residential properties must be properly glazed or screened to not intrude on the privacy of residents.
- 8.5 Provide a five (5) metre wide landscape buffer along the common boundary of the subject site and adjoining residential properties situated on Thomas Street in accordance with the approved plans (refer to condition 2.1).
- 8.6 All waste storage areas must be aesthetically screened from any frontage or adjoining property.
- 8.7 Impervious paved and drained washdown areas to accommodate all refuse containers must be provided. The areas must be aesthetically screened from any road frontage or adjoining property.

9.0 LANDSCAPING WORKS

- 9.1 Landscaping must be provided between and around the buildings and new car parking areas, particularly toward the south east boundary. The planting must be designed to specifically reduce the perceived scale of the buildings and must include advanced plant stock, to create an immediate effect.
- 9.2 All landscaping must be constructed and or established prior to the commencement of the use.
- 9.3 The landscaped areas must be subject to an ongoing maintenance and replanting programme (if necessary).

10.0 ELECTRICITY AND TELECOMMUNICATIONS

- 10.1 Underground electricity and telecommunication connections must be provided to the proposed development to the standards of the relevant authorities.

10.2 Evidence must be provided of a Telecommunications Infrastructure Provisioning Confirmation and Certificate of Electricity Supply with the relevant service providers to provide the use with telecommunication and live electricity connections, in accordance with the requirements of the relevant authorities prior to the commencement of the use.

11.0 ASSET MANAGEMENT

11.1 Any alteration necessary to electricity, telephone, water mains, sewerage mains, and/or public utility installations resulting from the development or in connection with the development, must be at full cost to the Developer.

11.2 Any damage to existing water supply or sewerage infrastructure, kerb and channel, pathway or roadway (including removal of concrete slurry from public land, pathway, roads, kerb and channel and stormwater gullies and drainage lines) which may occur during any works carried out in association with the approved development must be repaired. This must include the reinstatement of the existing traffic signs and pavement markings which may have been removed.

12.0 ENVIRONMENTAL

12.1 Any application for a Development Permit for Operational Works must be accompanied by an Erosion and Sediment Control Plan which addresses, but is not limited to, the following:

- (i) objectives;
- (ii) site location / topography;
- (iii) vegetation;
- (iv) site drainage;
- (v) soils;
- (vi) erosion susceptibility;
- (vii) erosion risk;
- (viii) concept;
- (ix) design; and
- (x) implementation, for the construction and post construction phases of work.

12.2 Implement and maintain the Erosion Control and Stormwater Control Management Plan on-site for the duration of the works, and until all exposed soil areas are permanently stabilised (for example, turfed, hydromulched, concreted, landscaped). The prepared Erosion Control and Stormwater Control Management Plan must be available on-site for inspection by Council Officers during those works.

13.0 OPERATING PROCEDURES

13.1 All construction materials, waste, waste skips, machinery and contractors' vehicles must be located and stored or parked within the site. No storage of materials, parking of construction machinery or contractors' vehicles will be permitted in Bruigom Street, Feez Street, Langford Street or Agnew Avenue.

13.2 Noise from the activity must not cause an environmental nuisance.

13.3 Noise mitigation measures must be implemented in accordance with the recommendations in the Noise Impact Assessment (refer to condition 2.1). Should the development be found to be creating a noise nuisance, then the report must be revised by the owner/operator within three (3) months and submitted to Council for approval with additional mitigation measures. Council may require any noise mitigation measures identified in the assessment to be implemented within appropriate timeframes.

13.4 When requested by the administering authority, noise monitoring must be undertaken and recorded to investigate any complaint of nuisance caused by noise. The monitoring data,

an analysis of the data and a report, including noise mitigation measures, must be provided to the administering authority within fourteen days of the completion of the investigation.

Noise measurements must be compared with the acoustic quality objectives specified in the most recent edition of the Environmental Protection (Noise) Policy and noise monitoring conducted in accordance with the most recent edition of *Department of Environment and Heritage Protection Noise Measurement Manual*.

- 13.5 The air-conditioning plant for the proposed Preparatory and Kindergarten buildings must be selected and installed to meet a combined noise level of 47dBA at the nearby residential dwellings at point R1 as shown on *Appendix A- Figures within the Noise Impact Assessment (Figure 1: Aerial photograph of site, Revision 0 – 9 April 2015, by Savery and Associates Pty Ltd)*. Noise testing is recommended to ascertain the noise emissions from the air-conditioning plants after installation. Acoustic enclosures or barriers may be required in case the noise exceeds the limit.
- 13.6 All waste storage areas must be kept in a clean, tidy condition in accordance with *Environmental Protection (Waste Management) Regulations*.

ADVISORY NOTES

NOTE 1. Aboriginal Cultural Heritage

It is advised that under section 23 of the *Aboriginal Cultural Heritage Act 2003*, a person who carries out an activity must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal Cultural Heritage (the “cultural heritage duty of care”). Maximum penalties for breaching the duty of care are listed in the Aboriginal Cultural Heritage legislation. The information on Aboriginal Cultural Heritage is available on the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs website: www.datsima.qld.gov.au

NOTE 2. Asbestos Removal

Any demolition and/or removal works involving asbestos materials must be undertaken in accordance with the requirements of the *Work Health and Safety Act 2011* and *Public Health Act 2005*.

NOTE 3. General Environmental Duty

General environmental duty under the *Environmental Protection Act 1994* prohibits unlawful environmental nuisance caused by noise, aerosols, particles, dust, ash, fumes, light, odour or smoke beyond the boundaries of the property during all stages of the development including earthworks, construction and operation.

NOTE 4. General Safety Of Public During Construction

The *Work Health and Safety Act 2011* and *Manual of Uniform Traffic Control Devices* must be complied with in carrying out any construction works, and to ensure safe traffic control and safe public access in respect of works being constructed on a road.

NOTE 5. Property Notes

All vehicular access to and from the development must be via the Bruigom Street and Feez Street only. Direct vehicular access to Langford Street and Agnew Avenue is prohibited.

NOTE 6. Infrastructure Charges Notice

This application is subject to infrastructure charges in accordance with Council policies. The charges are presented on an Infrastructure Charges Notice.

The following is an extract from the *Planning Act 2016* (Chapter 6)

Appeal rights

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 states—
- (a) matters that may be appealed to—
 - (i) either a tribunal or the P&E Court; or
 - (ii) only a tribunal; or
 - (iii) only the P&E Court; and
 - (b) the person—
 - (i) who may appeal a matter (the **appellant**); and
 - (ii) who is a respondent in an appeal of the matter; and
 - (iii) who is a co-respondent in an appeal of the matter; and
 - (iv) who may elect to be a co-respondent in an appeal of the matter.
- (2) An appellant may start an appeal within the appeal period.
- (3) The **appeal period** is—
- (a) for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency or
 - (b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
 - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or
 - (d) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
 - (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the deemed approval notice to the assessment manager; or
 - (f) for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.
- Note—
See the P&E Court Act for the court's power to extend the appeal period.
- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—
- (a) the adopted charge itself; or
 - (b) for a decision about an offset or refund—
 - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
 - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

230 Notice of appeal

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—
 - (a) is in the approved form; and
 - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar must, within the service period, give a copy of the notice of appeal to—
 - (a) the respondent for the appeal; and

- (b) each co-respondent for the appeal; and
 - (c) for an appeal about a development application under schedule 1, table 1, item 1—each principal submitter for the development application; and
 - (d) for an appeal about a change application under schedule 1, table 1, item 2—each principal submitter for the change application; and
 - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); and
 - (f) for an appeal to the P&E Court—the chief executive; and
 - (g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.
- (4) The **service period** is—
- (a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
 - (b) otherwise—10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection
- (6) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.

231 Other appeals

- (1) Subject to this chapter, schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.
- (2) The Judicial Review Act 1991, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the Judicial Review Act 1991 in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section— **decision** includes—
 - (a) conduct engaged in for the purpose of making a decision; and
 - (b) other conduct that relates to the making of a decision; and
 - (c) the making of a decision or the failure to make a decision; and
 - (d) a purported decision; and
 - (e) a deemed refusal.

non-appealable, for a decision or matter, means the decision or matter—

- (a) is final and conclusive; and
- (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the Judicial Review Act 1991 or otherwise, whether by the Supreme Court, another court, a tribunal or another entity; and
- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

232 Rules of the P&E Court

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) However, the P&E Court may hear and decide an appeal even if the person has not complied with rules of the P&E Court.

Schedule 1

Appeals section 229

1 Appeal rights and parties to appeals

- (1) Table 1 states the matters that may be appealed to—(a) the P&E court; or (b) a tribunal.
- (2) However, table 1 applies to a tribunal only if the matter involves—
- (a) the refusal, or deemed refusal of a development application, for—
 - (i) a material change of use for a classified building; or
 - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
 - (b) a provision of a development approval for—
 - (i) a material change of use for a classified building; or
 - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
 - (c) if a development permit was applied for—the decision to give a preliminary approval for—
 - (i) a material change of use for a classified building; or
 - (ii) operational work associated with building work, a retaining wall, or a tennis court; or
 - (d) a development condition if—
 - (i) the development approval is only for a material change of use that involves the use of a building classified under the Building Code as a class 2 building; and
 - (ii) the building is, or is proposed to be, not more than 3 storeys; and
 - (iii) the proposed development is for not more than 60 sole-occupancy units; or
 - (e) a decision for, or a deemed refusal of, an extension application for a development approval that is only for a material change of use of a classified building; or
 - (f) a decision for, or a deemed refusal of, a change application for a development approval that is only for a material change of use of a classified building; or
 - (g) a matter under this Act, to the extent the matter relates to—
 - (i) the Building Act, other than a matter under that Act that may or must be decided by the Queensland Building and Construction Commission; or
 - (ii) the Plumbing and Drainage Act, part 4 or 5; or
 - (h) a decision to give an enforcement notice in relation to a matter under paragraphs (a) to (g); or
 - (i) a decision to give an infrastructure charges notice; or
 - (j) the refusal, or deemed refusal, of a conversion application; or
 - (k) a matter that, under another Act, may be appealed to the tribunal; or
 - (l) a matter prescribed by regulation.
- (3) Also, table 1 does not apply to a tribunal if the matter involves—
- (a) for a matter in subsection (2)(a) to (d)—
 - (i) a development approval for which the development application required impact assessment; and
 - (ii) a development approval in relation to which the assessment manager received a properly made submission for the development application; or
 - (b) a provision of a development approval about the identification or inclusion, under a variation approval, of a matter for the development.
- (4) Table 2 states the matters that may be appealed only to the P&E Court.
- (5) Table 3 states the matters that may be appealed only to the tribunal.
- (6) In each table—
- (a) column 1 states the appellant in the appeal; and
 - (b) column 2 states the respondent in the appeal; and
 - (c) column 3 states the co-respondent (if any) in the appeal; and
 - (d) column 4 states the co-respondents by election (if any) in the appeal.
- (7) If the chief executive receives a notice of appeal under section 230(3)(f), the chief executive may elect to be a co-respondent in the appeal.

Table 1			
Appeals to the P&E Court and, for certain matters, to a tribunal			
1. Development applications An appeal may be made against— (a) the refusal of all or part of the development application; or (b) the deemed refusal of the development application; or (c) a provision of the development approval; or (d) if a development permit was applied for—the decision to give a preliminary approval.			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant	The assessment manager	If the appeal is about a concurrence agency's referral response—the	1 A concurrence agency that is not a co-respondent 2 If a chosen Assessment manager is the respondent—

Table 1			
Appeals to the P&E Court and, for certain matters, to a tribunal			
		concurrency agency	the prescribed assessment manager 3 Any eligible advice agency for the application 4 Any eligible submitter for the application
<p>2. Change applications An appeal may be made against— (a) a responsible entity's decision for a change application, other than a decision made by the P&E court; or (b) a deemed refusal of a change application.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 The applicant 2 If the responsible entity is the assessment manager—an affected entity that gave a pre-request notice or response notice	The responsible entity	If an affected entity starts the appeal—the applicant	1 A concurrency agency for the development application 2 If a chosen assessment manager is the respondent—the prescribed assessment manager 3 A private certifier for the development application 4 Any eligible advice agency for the change application 5 Any eligible submitter for the change application
<p>3. Extension applications An appeal may be made against— (a) the assessment manager's decision about an extension application; or (b) a deemed refusal of an extension application.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 1 The applicant 2 For a matter other than a deemed refusal of an extension application – a concurrency agency, other than the chief executive, for the application	The assessment manager	If a concurrency agency starts the appeal – the applicant	If a chosen assessment manager is the respondent – the prescribed assessment manager
<p>4. Infrastructure charges notices An appeal may be made against an infrastructure charges notice on 1 or more of the following grounds a) The notice involved an error relating to – (i) The application of the relevant adopted charge; or Examples of errors in applying an adopted charge – <ul style="list-style-type: none"> • The incorrect application of gross floor area for a non-residential development • Applying an incorrect 'use category', under a regulation, to the development <ul style="list-style-type: none"> (i) The working out of extra demands, for section 120; or (ii) An offset or refund; or b) The was no decision about an offset or refund; or c) If the infrastructure charges notice states a refund will be given – the timing for giving the refund; or d) The amount of the charge is so unreasonable that no reasonable relevant local government could have imposed the amount.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent	Column 4 Co-respondent by election

Table 1			
Appeals to the P&E Court and, for certain matters, to a tribunal			
		(if any)	(if any)
The person given the Infrastructure charges notice	The local government that gave the infrastructure charges notice	-	-
<p>5. Conversion applications An appeal may be made against— (a) the refusal of a conversion application; or (b) a deemed refusal of a conversion application.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The applicant	The local government to which the conversion application was made	-	-
<p>6. Enforcement notices An appeal may be made against the decision to give an enforcement notice.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
The person given the enforcement notice	The enforcement authority	-	If the enforcement authority is not the local government for the premises in relation to which the offence is alleged to have happened—the local government

Table 2			
Appeals to the P&E Court only			
<p>1. Appeals from tribunal An appeal may be made against a decision of a tribunal, other than a decision under section 252, on the ground of— (a) an error or mistake in law on the part of the tribunal; or (b) jurisdictional error.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A party to the proceedings for the decision	The other party to the proceedings for the decision	-	-
<p>2. Eligible submitter appeals An appeal may be made against the decision to give a development approval, or an approval for a change application, to the extent that the decision relates to— (a) any part of the development application for the development approval that required impact assessment; or (b) a variation request.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 For a development application—an eligible submitter for the development application 2 For a change application—an eligible submitter for	1 For a development application—the assessment manager 2 For a change application—the responsible entity	1 The applicant 2 If the appeal is about a concurrence agency's referral response—the concurrence agency	Another eligible submitter for the application

Table 2 Appeals to the P&E Court only			
the change application			
<p>3. Eligible submitter and eligible advice agency appeals An appeal may be made against a provision of a development approval, or failure to include a provision in the development approval, to the extent the matter relates to— (a) any part of the development application or the change application, for the development approval, that required impact assessment; or (b) a variation request.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 For a development application—an eligible submitter for the development application 2 For a change application—an eligible submitter for the change application 3 An eligible advice agency for the development application or change application	1 For a development application—the assessment manager 2 For a change application—the responsible entity	1 The applicant 2 If the appeal is about a concurrence agency's referral response—the concurrence agency	Another eligible submitter for the application
<p>4. Compensation claims An appeal may be made against— (a) a decision under section 32 about a compensation claim; or (b) a decision under section 265 about a claim for compensation; or (c) a deemed refusal of a claim under paragraph (a) or (b).</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person dissatisfied with the decision	The local government to which the claim was made	-	-
<p>5. Registered premises An appeal may be made against a decision of the Minister under chapter 7, part 4.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
1 A person given a decision notice about the decision 2 If the decision is to register premises or renew the registration of premises—an owner or occupier of premises in the affected area for the registered premises who is dissatisfied with the decision	The Minister	-	If an owner or occupier starts the appeal – the owner of the registered premises

Table 2 Appeals to the P&E Court only			
<p>6. Local laws An appeal may be made against a decision of a local government, or conditions applied, under a local law about—</p> <p>(a) the use of premises, other than a use that is the natural and ordinary consequence of prohibited development; or</p> <p>(b) the erection of a building or other structure.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who— (a) applied for the decision; and (b) is dissatisfied with the decision or conditions.	The local government	-	-

Table 3 Appeals to the tribunal only			
<p>1. Building advisory agency appeals An appeal may be made against giving a development approval for building work to the extent the building work required code assessment against the building assessment provisions.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A building advisory agency for the development application related to the approval	The assessment manager	The applicant	<p>1 A concurrence agency for the development application related to the approval</p> <p>2 A private certifier for the development application related to the approval</p>
<p>3. Certain decisions under the Building Act and the Plumbing and Drainage Act An appeal may be made against a decision under—</p> <p>(a) the Building Act, other than a decision made by the Queensland Building and Construction Commission; or</p> <p>(b) the Plumbing and Drainage Act, part 4 or 5.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who received, or was entitled to receive, notice of the decision	The person who made the decision	-	-
<p>4. Local government failure to decide application under the Building Act An appeal may be made against a local government's failure to decide an application under the Building Act within the period required under that Act.</p>			
Column 1 Appellant	Column 2 Respondent	Column 3 Co-respondent (if any)	Column 4 Co-respondent by election (if any)
A person who was entitled to receive, notice of the decision	The local government to which the application was made	-	-